



STATE OF WASHINGTON

PUBLIC DISCLOSURE COMMISSION

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MEMORANDUM

TO: Members, Public Disclosure Commission

FROM: Doug Ellis
Acting Assistant Director

DATE: June 2, 2005

RE: Executive Summary and Staff Recommendations Regarding the Washington State Democratic Central Committee Failure to Timely Disclose Individual Donor Information and Debts and Orders Placed for Candidate Support, PDC Case No. 05-136.

Staff has completed its investigation into allegations that the Washington State Democratic Central Committee (WSDCC) failed to timely file donor information and failed to timely disclose debts and orders placed for candidate support in the 2004 election.

On February 25, 2005, a staff generated complaint against the WSDCC was filed alleging that detailed information on 3,641 individual donors representing \$394,544 in transfers from the WSDCC federal account to the WSDCC State Non-Exempt Account made on October 4, 2004 was not publicly disclosed until January 24, 2005. The donor information was disclosed 104 days late.

The complaint also alleged the WSDCC failed to timely disclose debts and orders placed for candidate support expenditures in 2004. The debts and orders placed were disclosed between 67 and 126 days late.

Background

The Washington State Democratic Central Committee is the bona fide state party committee for the Washington State Democrats. During the 2004 election cycle, the WSDCC raised \$2,807,095 and expended \$2,703,891 from its non-exempt candidate

account and raised \$6,277,217 and expended \$5,955,925 from its exempt activities account.

On September 14, 2004, Paul Berendt, Chair of the Washington State Democratic Central Committee, notified the Public Disclosure Commission by letter that WSDCC planned to transfer funds from its Federal Account to its State Non-Exempt Account. Berendt stated that the contributions to be transferred were from individual donors, and that individual donor information would be reported to the PDC on forms C-3 and C-4.

On September 16, 2004, Susan Harris, Assistant Director of the PDC, sent a letter to Mr. Berendt, confirming that the individual contributions composing the amount to be transferred to the WSDCC State Non-Exempt Account should be reported on form C-3 in accordance with state law.

The WSDCC filed a PDC form C-3 on October 22, 2004 indicating a deposit of \$394,544 to the WSDCC's State Non-Exempt Account on October 4, 2004. No individual contributor information was disclosed on the report. That particular report was filed 10 days late. It was due on October 12, 2004.

Failure to Disclose Donor Details

The identity of the individual contributors of \$394,543 in contributions transferred on October 4, 2004 from WSDCC's Federal Account to its State Non-Exempt Account were required to be disclosed on form C-3 on October 12, 2004. The contributions were first disclosed in detail on form C-3 on January 24, 2005, 104 days late.

Susan Harris stated that she contacted WSDCC Chief of Staff Annette Anderson on at least two occasions regarding the requirement to provide individual donor detail of the transferred funds. The first contact was on October 29, 2004 and the second in December of 2004. Additionally, she contacted Paul Berendt on or about January 21, 2005 to ascertain the status of the overdue report.

On January 20, 2005, PDC Political Finance Specialist Tony Perkins was contacted by Ms. Anderson about the detailed donor information and was told the information would be filed the following day.

In February 2005, Mr. Berendt stated that security features on the party's federal disclosure compliance software and misinformation he received from WSDCC staff created the lapse in reporting. Mr. Berendt claimed that the identities of the individual contributors were available to the public on the WSDCC's Federal Account reports, posted to the Federal Election Commission's website.

The Federal Election Commission (FEC) requires detailed information on contributors to candidates and political committees when an individual contribution exceeds \$200.

Staff review of the donors which comprised the \$394,543 transfer from the WSDCC Federal Account to the State Non-Exempt Account indicates that \$196,400

(approximately 50% of the funds transferred) was comprised of donations less than the FEC \$200 threshold for donor itemization.

The identity of the contributors of approximately 50% of the funds transferred between WSDCC accounts was not disclosed in any form until months after the 2004 general election.

Failure to Disclose Debts and Orders Placed

On February 15, 2005, Phil Lloyd, a private consultant retained by the WSDCC to review the books and operations of the WSDCC, contacted PDC staff about a significant amount of debt incurred by the WSDCC for candidate support in the 2004 election that had not been reported.

Mr. Lloyd submitted amended C-4 reports for the WSDCC on February 15, 2005 listing debts incurred or outstanding during the periods covered by the reports. A total of \$704,815 was unique debt required to be disclosed by the WSDCC.

<u>C-4 Report</u>	<u>Debts</u>	<u>Days Late</u>
21-day C-4	\$124,521	126
7-day C-4	\$541,716	112
Post Election	<u>\$ 38,578</u>	67
Total Debt	\$704,815	

The disclosure of the debts and orders placed was between 67 and 126 days late.

Mr. Berendt stated that the late reporting, in many cases, was because vendors did not provide invoices to the party until after the general election. He also stated that information concerning the party's candidate support expenditures was available to the public through reports of Last Minute Contributions (LMC) posted to the PDC website.

A PDC staff review of the LMC reports indicated that less than half of the WSDCC's non-disclosed debts or obligations closely approximated the amounts attributed directly to specific candidates.

It should also be noted that LMC reports are not an indicator of a committee's outstanding obligations, because they do not show whether an expense has been paid.

Prior Enforcement and Audit Activity

Prior Enforcement Actions with the WSDCC

On July 8, 2002, the staff of the Public Disclosure Commission began an investigation of a complaint filed by PDC Executive Director Vicki Rippie against the Washington State Democratic Central Committee, alleging that WSDCC failed to report or to timely

report receipt of over \$5,931,000 in contributions into its exempt funds account during the 2000 election.

On June 25, 2003, WSDCC and PDC reached an agreement and a judgment was entered against the WSDCC which included among other provisions a \$250,000 penalty for the 2000 election reporting failures. The judgment in *State of Washington, ex rel. Washington State Public Disclosure Commission v. Washington State Democratic Central Committee* provided that \$100,000 of the \$250,000 penalty be suspended provided that WSDCC not commit apparent violations of RCW 42.17 which resulted in a referral to the Attorney General's office through December 31, 2008.

Audit Activity

On February 2, 2004, then PDC Chief Political Finance Specialist Kurt Young completed a limited scope audit of the 2002 election activities of WSDCC. As a result of that audit, Mr. Berendt was notified on May 20, 2004 that no orders placed, debts or obligations were reported by WSDCC's State Non-Exempt Account for the 2002 general election.

A letter sent that same day by Director of Compliance Phil Stutzman cautioned Mr. Berendt that WSDCC was required to adhere to disclosure and reporting requirements, including the requirement to disclose orders placed. He warned Mr. Berendt that failure by WSDCC to comply with reporting requirements during future election cycles, including the specific requirements for orders placed, debts and obligations, could result in enforcement action.

Staff Recommendation

Staff asserts that the WSDCC failed to timely disclose individual contributor detailed information for \$394,544 transferred from its federal account to its state non-exempt account. Staff also asserts that the WSDCC failed to timely disclose a total of \$704,815 in debts and orders placed for candidate support expenditures for the 2004 election.

Based on this determination and previous actions taken with the WSDCC, staff recommends that in PDC Case No. 05-136 the Commission report multiple apparent violations of RCW 42.17.080 and 42.17.090 by the WSDCC and refer the matter to the Office of the Attorney General with a recommendation to institute legal proceedings against the WSDCC for its failures. Additionally, staff recommends that, upon the referral to the Attorney General, that the Commission direct staff to schedule a hearing before the Commission as outlined in the judgment entered in *State of Washington, ex rel. Washington State Public Disclosure Commission v. Washington State Democratic Central Committee* on June 25, 2003 regarding the status of the suspended portion of the penalty entered in that matter.